

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2802.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 21, 2013.

PREAMBLE

[R13-144]

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R12-15-725 | Amend |
| R12-15-725.01 | New Section |
| R12-15-725.02 | New Section |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. §§ 45-105(B)(1) and 45-576(H)
Implementing statutes: A.R.S. § 45-576
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 19 A.A.R. 2795, September 6, 2013 (*in this issue*)
- 4. The agency's contact person who can answer questions about the rulemaking:**
- | | |
|------------|--|
| Name: | Jeff Tannler
Statewide Active Management Area Director |
| Address: | Department of Water Resources
3550 N. Central Ave.
Phoenix, AZ 85012 |
| Telephone: | (602) 771-8424 |
| Fax: | (602) 771-8686 |
| E-mail: | jmtannler@azwater.gov |
| Name: | Ayesha Vohra
Deputy Counsel |
| Address: | Department of Water Resources
3550 N. Central Ave.
Phoenix, AZ 85012 |
| Telephone: | (602) 771-8472 |
| Fax: | (602) 771-8686 |
| E-mail: | avohra@azwater.gov |

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Reasons for Initiating the Rulemaking

Developers of new subdivisions within an Active Management Area ("AMA") must obtain a determination of assured water supply ("AWS") from the Arizona Department of Water Resources ("Department") prior to the sale of any lots. A.R.S. § 45-576(A). One of several requirements to obtain a determination of assured water supply is to demonstrate that any groundwater use is consistent with the management goal of the AMA. The management goal of the Pinal AMA, where a predominately agricultural economy exists, is to allow development of non-irrigation uses and to preserve existing agricultural economies for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses. A.R.S. § 45-562(B).

One method of demonstrating that groundwater use is consistent with the management goal of the AMA is through a mechanism for the extinguishment of grandfathered groundwater rights. Under the Department's AWS Rules, when a grandfathered groundwater right is extinguished, the Department issues credits that can be used by a developer to meet the consistency with the management goal requirement for an AWS determination.

Prior to 2007, the amount of credits issued for the extinguishment of grandfathered groundwater rights in the Pinal AMA remained the same each year, with no reduction over time. In 2007, the Department am[R13-144] ended the rule governing the calculation of extinguishment credits in the Pinal AMA, R12-15-725, to provide for a gradual reduction in the amount of credits given for the extinguishment of grandfathered groundwater rights, depending on when the extinguishment occurs. Under the rule as amended in 2007, the first reduction in the allocation factor for calculating extinguishment credits was to take effect on January 1, 2010, with gradual increases in the reduction each year thereafter until 2054, when no credits would be given for the extinguishment of a grandfathered right.

One of the major reasons for the 2007 amendment was that residential development in the Pinal AMA was increasing rapidly, and the rate of development was projected to continue for the foreseeable future. Some of this development was anticipated to result in the extinguishment of Irrigation Grandfathered Rights ("IGFRs") for extinguishment credits. Extinguishment of IGFRs under the extinguishment credit rule in effect at that time, combined with rapid development, would lead to over-allocation of unreplenished groundwater supplies. The 2007 amendment was designed to preserve sufficient groundwater supplies to meet the demands of agricultural irrigation, approved assured water supply determinations and possible future assured water supply determinations, consistent with the Pinal AMA's management goal.

Shortly after the 2007 rule amendment, the Arizona real estate market began experiencing a significant downturn, and residential development in the Pinal AMA slowed dramatically. In 2009, landowners and irrigation districts in the Pinal AMA expressed concerns to the Department that implementation of the reduction in extinguishment credits as scheduled could result in owners of farm land in the AMA prematurely extinguishing their irrigation grandfathered rights before the first reduction in credits was to take effect on January 1, 2010. It was feared that this would exacerbate the effects of the economic recession in the area by taking more lands out of agricultural production and increasing the water and power costs for those lands that continued to be farmed.

Consistent with the Pinal AMA management goal of preserving the agricultural economy for as long as feasible while ensuring water supply availability for future municipal and industrial water uses, the Department amended rule R12-15-725 in 2009 to delay the effective date of the first reduction of the allocation factor for calculating extinguishment credits in the Pinal AMA until 2014. It was felt that by 2014, economic conditions in the AMA would improve sufficiently so that implementation of the reduction in extinguishment credits at that time would not have a significant negative impact on the local economy. Through the 2009 amendment, the allocation factors for calendar years 2010 through 2013 were increased to 100, and the allocation factors for calendar years 2014 through 2016 were increased to 94, 88 and 82, respectively. No changes were made to the allocation factors for calendar years 2017 and thereafter.

Earlier this year, a number of landowners in the Pinal AMA requested the Department to again delay the reduction in the allocation factors used to calculate extinguishment credits in the Pinal AMA because economic conditions in the area have not improved as much as expected when rule R12-15-725 was amended in 2009. After considering this request, the Department has determined that it is appropriate to adopt a rule temporarily delaying by five years each annual reduction in the allocation factor. The new rule will automatically repeal effective September 15, 2014, at which time the current reduction schedule will become effective again. This temporary delay in the reduction schedule will allow water users and other interested parties in the Pinal AMA to work together to examine conditions within the AMA and offer alternatives for meeting the Pinal AMA's management goal, which could include making the five-year delay permanent through another rulemaking proceeding.

Explanation of the Rules

The Department is proposing to amend rule R12-15-725 by deleting subsection (B), which contains the methodology for calculating extinguishment credits in the Pinal AMA. The Department is proposing to adopt two new rules governing the calculation of extinguishment credits in the Pinal AMA, R12-15-725.01 and R12-15-725.02. Subsection (A) of proposed new rule R12-15-725.01 contains the same language that is now in rule R12-15-725(B), except that the table of allocation factors has been changed to delay each annual reduction in the allocation factor by five years. Consequently, the first year in which there is a reduction in the allocation factor is 2019, rather than in 2014, and the

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last year in which there is an allocation factor is 2059, rather than 2054. Subsection (B) of proposed new rule R12-15-725 provides that the section automatically expires effective September 15, 2014.

Proposed new rule R12-15-725.02 contains the methodology for calculating extinguishment credits in the Pinal AMA beginning on September 15, 2014. The language in the proposed rule is the same as the language that is now in rule R12-15-725(B), except that the table of allocation factors has been changed by delaying the first reduction in the allocation factor until September 15, 2014. Beginning September 15, 2014, the allocation factors are identical to the allocation factors currently in rule R12-15-725(B).

The Department will request the Governor's Regulatory Review Council to approve the R12-15-725 amendment and the new rules R12-15-725.01 and R12-15-725.02 with an immediate effective date so that they will become effective immediately upon filing with the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A)(4), which provides that a rule may be effective immediately if the rule provides a benefit to the public and a penalty is not associated with a violation of the rule. The amendment and new rules will allow irrigation grandfathered right holders a temporary delay in the allocation reduction schedule in order to work with other interested parties in the Pinal AMA to offer alternatives for meeting the Pinal AMA's management goal. Additionally, no penalty is associated with a violation of the rule. Lastly, the Department is requesting an immediate effective date in order to allow the rule amendment and new rules to take effect before the first scheduled allocation factor reduction set to occur January 1, 2014, under the current R12-15-725(B)(3).

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The proposed rule amendment will have a positive short-term economic impact on those persons who will use groundwater to irrigate agricultural lands within irrigation districts in the Pinal AMA between January 1, 2014, and September 15, 2014. The Department estimates that the cost savings for these persons could be up to \$2.05 per acre-foot of groundwater used. Additionally, the rule amendment will likely mitigate an otherwise negative economic impact on businesses within the Pinal AMA that sell farming materials, such as seed and equipment, and have a positive short-term economic impact on land developers within the Pinal AMA.

The rule amendment may have a negative short-term economic impact on governmental entities that receive tax revenues from the real estate taxes assessed on lands within the Pinal AMA, such as Pinal County and Maricopa County, as some lands within the AMA will remain in agricultural production during the period from January 1, 2014, to September 15, 2014, and therefore retain their lower agricultural tax status during that period. However, the loss in real estate tax revenue may be offset by more revenues from other taxes paid by the persons farming the lands, such as income taxes and sales taxes.

The rule amendment will likely result in more unreplenished groundwater withdrawals within the Pinal AMA, as some Irrigation Grandfathered Right ("IGFR") holders will likely continue irrigating their lands with groundwater during the period from January 1, 2014, to September 15, 2014, and some IGFR holders will receive more extinguishment credits during that period than they would receive without the rule amendment. These additional unreplenished groundwater withdrawals could have a slight negative economic impact on groundwater users and landowners within the general areas of the withdrawals by reducing the physical availability of groundwater supplies in those areas. The economic impact is not possible to quantify because it depends on factors such as the current groundwater levels and rates of urbanization in the areas of the withdrawals. However, the Department believes there will be no measurable negative economic impact.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Jeff Tannler
Statewide Active Management Area Director

Telephone: (602) 771-8424

Fax: (602) 771-8686

E-mail: jmtannler@azwater.gov

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10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department will hold an oral proceeding on the proposed rulemaking on October 15, 2013, at 10:00 a.m. at the following location:

Central Arizona College
Signal Peak Campus
8470 N. Overfield Road
Coolidge, AZ 85128
Room T116

Written comments may be submitted at any time prior to the close of the public record on October 15, 2013, at 5:00 p.m. Written comments not submitted at the oral proceeding described above should be submitted to:

Name: Sharon Scantlebury
Docket Supervisor
Address: Department of Water Resources
3550 N. Central Ave.
Phoenix, AZ 85012
Telephone: (602) 771-8472
Fax: (602) 771-8686
E-mail: sscantlebury@azwater.gov

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Section

~~R12-15-725. Pinal AMA – Groundwater Allowance and Extinguishment Credits Calculation~~

~~R12-15-725.01. Pinal AMA – Extinguishment Credits Calculation; Automatic Repeal~~

~~R12-15-725.02. Pinal AMA – Extinguishment Credits Calculation Effective September 15, 2014~~

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

~~R12-15-725. Pinal AMA – Groundwater Allowance and Extinguishment Credits Calculation~~

~~A.~~ The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:

1. No change
2. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - b. No change
 - c. No change
 - d. No change
3. No change

B. The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:

1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the applicable allocation factor as determined under subsection (B)(3) or (B)(4) of this Section.
2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (B)(3) or (B)(4) of this Section, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.
3. Except as provided in subsection (B)(4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (B)(1) or (B)(2) of this Section, the Director shall use the allocation factor associated with the year in which the grandfathered right is extinguished, as shown in the table below.

Year	Allocation Factor
2010	-100
2011	-100
2012	-100
2013	-100
2014	-94
2015	-88
2016	-82
2017	-76
2018	-74
2019	-72
2020	-70
2021	-68
2022	-66
2023	-64
2024	-62
2025	-60
2026	-58
2027	-56
2028	-54
2029	-52
2030	-50
2031	-48
2032	-46
2033	-44
2034	-42
2035	-40
2036	-38
2037	-36
2038	-34
2039	-32
2040	-30
2041	-28

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2042	-26
2043	-24
2044	-22
2045	-20
2046	-18
2047	-16
2048	-14
2049	-12
2050	-10
2051	-8
2052	-6
2053	-4
2054	-2
After 2054	0

4. ~~If, before January 1, 2055, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (B)(1) or (B)(2) of this Section, the Director shall use an allocation factor determined as follows:~~
- ~~a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (B)(3) of this Section.~~
 - ~~b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (B)(3) of this Section. The Director shall determine the year as follows:~~
 - ~~i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.~~
 - ~~ii. Subtract the difference in subsection (B)(4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.~~

R12-15-725.01. Pinal AMA – Extinguishment Credits Calculation; Automatic Repeal

- A.** The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:
1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the applicable allocation factor as determined under subsection (A)(3) or (A)(4) of this Section.
 2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (A)(3) or (A)(4) of this Section, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.
 3. Except as provided in subsection (A)(4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (A)(1) or (A)(2) of this Section, the Director shall use the allocation factor associated with the year in which the grandfathered right is extinguished, as shown in the following table.

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<u>Year</u>	<u>Allocation Factor</u>
<u>2010</u>	<u>100</u>
<u>2011</u>	<u>100</u>
<u>2012</u>	<u>100</u>
<u>2013</u>	<u>100</u>
<u>2014</u>	<u>100</u>
<u>2015</u>	<u>100</u>
<u>2016</u>	<u>100</u>
<u>2017</u>	<u>100</u>
<u>2018</u>	<u>100</u>
<u>2019</u>	<u>94</u>
<u>2020</u>	<u>88</u>
<u>2021</u>	<u>82</u>
<u>2022</u>	<u>76</u>
<u>2023</u>	<u>74</u>
<u>2024</u>	<u>72</u>
<u>2025</u>	<u>70</u>
<u>2026</u>	<u>68</u>
<u>2027</u>	<u>66</u>
<u>2028</u>	<u>64</u>
<u>2029</u>	<u>62</u>
<u>2030</u>	<u>60</u>
<u>2031</u>	<u>58</u>
<u>2032</u>	<u>56</u>
<u>2033</u>	<u>54</u>
<u>2034</u>	<u>52</u>
<u>2035</u>	<u>50</u>
<u>2036</u>	<u>48</u>
<u>2037</u>	<u>46</u>
<u>2038</u>	<u>44</u>
<u>2039</u>	<u>42</u>
<u>2040</u>	<u>40</u>
<u>2041</u>	<u>38</u>
<u>2042</u>	<u>36</u>
<u>2043</u>	<u>34</u>
<u>2044</u>	<u>32</u>
<u>2045</u>	<u>30</u>
<u>2046</u>	<u>28</u>
<u>2047</u>	<u>26</u>
<u>2048</u>	<u>24</u>
<u>2049</u>	<u>22</u>
<u>2050</u>	<u>20</u>
<u>2051</u>	<u>18</u>
<u>2052</u>	<u>16</u>
<u>2053</u>	<u>14</u>
<u>2054</u>	<u>12</u>
<u>2055</u>	<u>10</u>
<u>2056</u>	<u>8</u>

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<u>2057</u>	<u>6</u>
<u>2058</u>	<u>4</u>
<u>2059</u>	<u>2</u>
<u>After 2059</u>	<u>0</u>

4. If, before January 1, 2060, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (A)(1) or (A)(2) of this Section, the Director shall use an allocation factor determined as follows:
- a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (A)(3) of this Section.
 - b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (A)(3) of this Section. The Director shall determine the year as follows:
 - i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.
 - ii. Subtract the difference in subsection (A)(4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.

B. This section shall repeal automatically effective September 15, 2014.

R12-15-725.02. Pinal AMA – Extinguishment Credits Calculation Effective September 15, 2014

Beginning September 15, 2014, the Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:

- 1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the applicable allocation factor as determined under subsection (3) or (4) of this Section.
- 2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (3) or (4) of this Section, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.
- 3. Except as provided in subsection (4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (1) or (2) of this Section, the Director shall use the allocation factor associated with the year or portion of a year in which the grandfathered right is extinguished, as shown in the table below.

<u>Year</u>	<u>Allocation Factor</u>
<u>2010</u>	<u>100</u>
<u>2011</u>	<u>100</u>
<u>2012</u>	<u>100</u>
<u>2013</u>	<u>100</u>
<u>January 1, 2014 through September 14, 2014</u>	<u>100</u>
<u>September 15, 2014 through December 31, 2014</u>	<u>94</u>
<u>2015</u>	<u>88</u>
<u>2016</u>	<u>82</u>
<u>2017</u>	<u>76</u>
<u>2018</u>	<u>74</u>
<u>2019</u>	<u>72</u>
<u>2020</u>	<u>70</u>

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<u>2021</u>	<u>68</u>
<u>2022</u>	<u>66</u>
<u>2023</u>	<u>64</u>
<u>2024</u>	<u>62</u>
<u>2025</u>	<u>60</u>
<u>2026</u>	<u>58</u>
<u>2027</u>	<u>56</u>
<u>2028</u>	<u>54</u>
<u>2029</u>	<u>52</u>
<u>2030</u>	<u>50</u>
<u>2031</u>	<u>48</u>
<u>2032</u>	<u>46</u>
<u>2033</u>	<u>44</u>
<u>2034</u>	<u>42</u>
<u>2035</u>	<u>40</u>
<u>2036</u>	<u>38</u>
<u>2037</u>	<u>36</u>
<u>2038</u>	<u>34</u>
<u>2039</u>	<u>32</u>
<u>2040</u>	<u>30</u>
<u>2041</u>	<u>28</u>
<u>2042</u>	<u>26</u>
<u>2043</u>	<u>24</u>
<u>2044</u>	<u>22</u>
<u>2045</u>	<u>20</u>
<u>2046</u>	<u>18</u>
<u>2047</u>	<u>16</u>
<u>2048</u>	<u>14</u>
<u>2049</u>	<u>12</u>
<u>2050</u>	<u>10</u>
<u>2051</u>	<u>8</u>
<u>2052</u>	<u>6</u>
<u>2053</u>	<u>4</u>
<u>2054</u>	<u>2</u>
<u>After 2054</u>	<u>0</u>

4. If, before January 1, 2055, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (1) or (2) of this Section, the Director shall use an allocation factor determined as follows:
- a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (3) of this Section.
 - b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (3) of this Section. The Director shall determine the year as follows:
 - i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.
 - ii. Subtract the difference in subsection (4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.